

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FT. WORTH DIVISION**

ASBURY AUTOMOTIVE GROUP, INC.,
et al.,

Plaintiffs,

v.

THE FEDERAL TRADE COMMISSION,
et al.,

Defendants.

Civil Action No. 4:24-cv-00950-O

**APPENDIX TO OPPOSED EXPEDITED MOTION FOR PRELIMINARY INJUNCTION
STAYING FTC PROCEEDING PENDING ADJUDICATION OF THE ASBURY
PLAINTIFFS' CONSTITUTIONAL CLAIMS**

Plaintiffs Asbury Automotive Group, Inc., et al. (the “Asbury Plaintiffs”) submit this Appendix in Support of its Opposed Expedited Motion for Preliminary Injunction Staying FTC Proceeding Pending Adjudication of the Asbury Plaintiffs’ Constitutional Claims.

<u>Document</u>	<u>Page(s)</u>
Emails between counsel for the Asbury Plaintiffs and Defendants’ counsel from the DOJ, dated October 11, 2024, with attached Asbury Plaintiffs’ Opposed Expedited Motion for Preliminary Injunction Staying FTC Proceeding Pending Adjudication of the Asbury Plaintiffs’ Constitutional Claims	App.1- App.9
Email from Complaint Counsel (FTC) with attached copy of Complaint Counsel’s Preliminary Proposed Fact Witness List, dated October 11, 2024	App.10- App.23

Dated: October 14, 2024

Respectfully submitted,

FOLEY & LARDNER LLP

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By: /s/ Edward D. ("Ed") Burbach

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Robert F. Johnson III
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*Attorney in charge

^ *Pro Hac Vice* application forthcoming

Counsel for the Asbury Plaintiffs

Burbach, Ed

Subject: FW: Asbury et al. v. FTC et al: Expedited Motion for Preliminary Injunction

From: Belfer, Isaac C. <Isaac.C.Belfer@usdoj.gov>

Sent: Friday, October 11, 2024 5:04:43 PM

To: Burbach, Ed <eburbach@foley.com>; Brooks, Jamie <jbrooks4@ftc.gov>; Sepehri, John <jsepehri@foley.com>

Cc: Cowan, Zachary L. <Zachary.L.Cowan@usdoj.gov>; Hoffman, Matthew <mhoffman@ftc.gov>; Murray, Todd A. <tmurray@foley.com>; Salinas, Veronica <vsalinas@foley.com>; Lockerby, Michael J. <MLockerby@foley.com>

Subject: RE: Asbury et al. v. FTC et al: Expedited Motion for Preliminary Injunction

**** EXTERNAL EMAIL MESSAGE ****

Thanks, Ed. As you know, Monday is a federal holiday, so it will not be possible for me to get back to you then. We will do our best to get back to you by the end of the day on Tuesday.

Isaac C. Belfer

Trial Attorney

Consumer Protection Branch

U.S. Department of Justice

202-305-7134

Isaac.C.Belfer@usdoj.gov

From: Burbach, Ed <eburbach@foley.com>

Sent: Friday, October 11, 2024 5:39 PM

To: Belfer, Isaac C. <Isaac.C.Belfer@usdoj.gov>; Brooks, Jamie <jbrooks4@ftc.gov>; Sepehri, John <jsepehri@foley.com>

Cc: Cowan, Zachary L. <Zachary.L.Cowan@usdoj.gov>; Hoffman, Matthew <mhoffman@ftc.gov>; Murray, Todd A. <tmurray@foley.com>; Salinas, Veronica <vsalinas@foley.com>; Lockerby, Michael J. <MLockerby@foley.com>; Burbach, Ed <eburbach@foley.com>

Subject: [EXTERNAL] RE: Asbury et al. v. FTC et al: Expedited Motion for Preliminary Injunction

Isaac,

Further to the below, Jamie Brooks, the FTC's lead counsel in the administrative action, just emailed to us the attached Preliminary Proposed Fact Witness List in the administrative matter.

We are reviewing, but it appears to list hundreds of thousands of potential witnesses (see e.g. items 26-28).

Another reason why our motion should proceed expeditiously....

We look forward to confirmation of your opposition or non opposition to our motion **by noon CT, Monday, October 14.**

Ed Burbach

Partner

Chair, Government Solutions Practice Group

Co-Chair, State Attorneys General Practice

Austin Office Managing Partner

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From: Burbach, Ed <eburbach@foley.com>

Sent: Friday, October 11, 2024 3:25 PM

To: Belfer, Isaac C. <Isaac.C.Belfer@usdoj.gov>; Brooks, Jamie <jbrooks4@ftc.gov>; Sepehri, John <jsepehri@foley.com>

Cc: Cowan, Zachary L. <Zachary.L.Cowan@usdoj.gov>; Hoffman, Matthew <mhoffman@ftc.gov>; Murray, Todd A. <tmurray@foley.com>; Salinas, Veronica <vsalinas@foley.com>; Burbach, Ed <eburbach@foley.com>; Lockerby, Michael J. <MLockerby@foley.com>

Subject: RE: Asbury et al. v. FTC et al: Expedited Motion for Preliminary Injunction

Isaac,

Thanks for your email. Very surprising and unfortunate that you are no longer available to speak this afternoon and advise whether your clients oppose our clients' motion to enjoin the FTC's adjudicatory process as unconstitutional.

We cannot think of any reason that your clients would not oppose same; however, we look forward to learning if they wish to stipulate to the unconstitutionality of the FTC administrative proceeding and requested relief enjoining further action in the FTC administrative proceeding. If so it would save everyone a lot of time and expense. Attached is the very simple 1 page motion.

Please provide us with confirmation of your opposition or non opposition **by noon CT, Monday, October 14**. Failing same we will file noting your clients opposition.

P.S. With regard to the need to proceed with the motion, is the "here-and-now" irreparable injury that the Asbury Plaintiffs suffer from having to participate in a constitutionally infirm agency proceeding. *Axon*. The harm to the Asbury Plaintiffs is further compounded by the unspecified, unsupported, and inflammatory charges in the FTC Complaint and press. Also, although it may be true that the Commission set the hearing on April 16, there are numerous active deadlines exacerbated by the FTC's listing of over 700 persons with knowledge of relevant facts and refusal to provide the identify of the consumers it claims were harmed, its "survey" and its disparate impact "analysis" referred to in its Complaint and press release. In short, time is of the essence.

P.P.S. We are still available to discuss today (or any time before noon CT Monday).

Ed Burbach

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From: Belfer, Isaac C. <Isaac.C.Belfer@usdoj.gov>

Sent: Friday, October 11, 2024 2:28 PM

To: Burbach, Ed <eburbach@foley.com>; Brooks, Jamie <jbrooks4@ftc.gov>; Sepehri, John <jsepehri@foley.com>

Cc: Cowan, Zachary L. <Zachary.L.Cowan@usdoj.gov>; Hoffman, Matthew <mhoffman@ftc.gov>; Murray, Todd A. <tmurray@foley.com>; Salinas, Veronica <vsalinas@foley.com>

Subject: RE: Asbury et al. v. FTC et al: Expedited Motion for Preliminary Injunction

**** EXTERNAL EMAIL MESSAGE ****

Ed,

After further consultation with the agency, we do not think it makes sense to speak today. The agency needs a bit more time to consider its position on Plaintiffs' anticipated preliminary injunction motion, and we can let you know our position next week.

We would note that we only learned of Plaintiffs' anticipated motion late last night. There also does not appear to be any need for Plaintiffs to file their anticipated motion immediately, since the FTC evidentiary hearing is not scheduled to occur until April 2025. Moreover, our understanding is that Plaintiffs do not have any discovery deadlines in the FTC proceeding until the week of October 21. Again, though, we are actively considering Plaintiffs' anticipated motion and will let you know our position next week.

Thanks,

Isaac

Isaac C. Belfer
Trial Attorney
Consumer Protection Branch
U.S. Department of Justice
202-305-7134
Isaac.C.Belfer@usdoj.gov

From: Burbach, Ed <eburbach@foley.com>

Sent: Friday, October 11, 2024 1:42 PM

To: Belfer, Isaac C. <Isaac.C.Belfer@usdoj.gov>; Brooks, Jamie <jbrooks4@ftc.gov>; Sepehri, John <jsepehri@foley.com>

Cc: Cowan, Zachary L. <Zachary.L.Cowan@usdoj.gov>; Hoffman, Matthew <mhoffman@ftc.gov>; Murray, Todd A. <tmurray@foley.com>; Burbach, Ed <eburbach@foley.com>; Salinas, Veronica <vsalinas@foley.com>

Subject: [EXTERNAL] RE: Asbury et al. v. FTC et al: Expedited Motion for Preliminary Injunction

Isaac,

Following up on the below.

I am still available this afternoon any time other than between 2:30 and 3:30 CT.

Let me know what time works for you and we'll circulate a Teams invite.

Ed Burbach

Partner

Chair, Government Solutions Practice Group

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From: Burbach, Ed <eburbach@foley.com>
Sent: Friday, October 11, 2024 10:38 AM
To: Belfer, Isaac C. <Isaac.C.Belfer@usdoj.gov>; Brooks, Jamie <jbrooks4@ftc.gov>; Sepehri, John <jsepehri@foley.com>
Cc: Cowan, Zachary L. <Zachary.L.Cowan@usdoj.gov>; Hoffman, Matthew <mhoffman@ftc.gov>; Murray, Todd A. <tmurray@foley.com>; Burbach, Ed <eburbach@foley.com>
Subject: RE: Asbury et al. v. FTC et al: Expedited Motion for Preliminary Injunction

Of course.

I will be available this afternoon any time other than between 2:30 and 3:30 CT.
Let me know what time works for you and we'll circulate a Teams invite.

Ed Burbach

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From: Belfer, Isaac C. <Isaac.C.Belfer@usdoj.gov>
Sent: Friday, October 11, 2024 10:17 AM
To: Burbach, Ed <eburbach@foley.com>; Brooks, Jamie <jbrooks4@ftc.gov>; Sepehri, John <jsepehri@foley.com>
Cc: Cowan, Zachary L. <Zachary.L.Cowan@usdoj.gov>; Hoffman, Matthew <mhoffman@ftc.gov>; Murray, Todd A. <tmurray@foley.com>
Subject: RE: Asbury et al. v. FTC et al: Expedited Motion for Preliminary Injunction

**** EXTERNAL EMAIL MESSAGE ****

Hi Ed,

Thanks for reaching out. Before providing our position on your preliminary injunction motion, we think it would be helpful for all of us to get on the phone. Would you please let us know your availability for a call this afternoon?

Thanks,
Isaac

Isaac C. Belfer

Trial Attorney
Consumer Protection Branch
U.S. Department of Justice
202-305-7134
Isaac.C.Belfer@usdoj.gov

From: Burbach, Ed <eburbach@foley.com>
Sent: Thursday, October 10, 2024 8:59 PM
To: Brooks, Jamie <jbrooks4@ftc.gov>; Sepehri, John <jsepehri@foley.com>
Cc: Belfer, Isaac C. <Isaac.C.Belfer@usdoj.gov>; Cowan, Zachary L. <Zachary.L.Cowan@usdoj.gov>; Hoffman, Matthew <mhoffman@ftc.gov>; Burbach, Ed <eburbach@foley.com>; Murray, Todd A. <tmurray@foley.com>
Subject: [EXTERNAL] RE: Asbury et al. v. FTC et al: Expedited Motion for Preliminary Injunction

Thanks Jamie.

Isaac and Zach,
Nice to meet you.

Please advise if your clients are opposed to an Expedited Motion for Preliminary Injunction. We still believe they are (unless they want to agree to dismiss their administrative proceeding ☺).

If we do not hear differently from you by Noon ET tomorrow we will of course file the Motion as opposed.

Thanks!

Ed Burbach

Partner

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From: Brooks, Jamie <jbrooks4@ftc.gov>
Sent: Thursday, October 10, 2024 7:50 PM
To: Burbach, Ed <eburbach@foley.com>; Sepehri, John <jsepehri@foley.com>
Cc: Isaac.C.Belfer@usdoj.gov; Zachary.L.Cowan@usdoj.gov; Hoffman, Matthew <mhoffman@ftc.gov>
Subject: RE: Asbury et al. v. FTC et al: Expedited Motion for Preliminary Injunction

**** EXTERNAL EMAIL MESSAGE ****

Hi Ed,

I am putting you in touch with Isaac Belfer and Zack Cowan at DOJ, who are counsel on the federal action. We will let them respond regarding whether they oppose the motion. Complaint counsel has not made any representations on that issue.

Best,

Jamie

Jamie D. Brooks
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Federal Trade Commission
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jbrooks4@ftc.gov
She/her

From: Burbach, Ed <eburbach@foley.com>
Sent: Thursday, October 10, 2024 5:59 PM
To: Brooks, Jamie <jbrooks4@ftc.gov>
Cc: Burbach, Ed <eburbach@foley.com>; Sepehri, John <jsepehri@foley.com>
Subject: Asbury et al. v. FTC et al: Expedited Motion for Preliminary Injunction

Jamie,

Per my voice mail, thanks for advising that for now we can communicate with you regarding the lawsuit we filed in Ft. Worth. As we discussed we will be filing an Expedited Motion for Preliminary Injunction. We will mark the defendants as opposed on the certificate of conference (unless y'all change your mind and decide that you will not oppose!).

Let me know if you have any questions.

Ed Burbach

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

ASBURY AUTOMOTIVE GROUP, INC.,
et al.,

Plaintiffs,

v.

THE FEDERAL TRADE COMMISSION,
et al.,

Defendants.

No. 4:24-cv-00950-O

**ASBURY PLAINTIFFS' OPPOSED EXPEDITED MOTION FOR PRELIMINARY
INJUNCTION STAYING FTC PROCEEDING PENDING ADJUDICATION OF
THE ASBURY PLAINTIFFS' CONSTITUTIONAL CLAIMS**

Pursuant to Fed. R. Civ. P. 65(a) and the Court's inherent authority, and for the reasons set forth in the accompanying brief, the Asbury Plaintiffs¹ hereby request that the Court— following expedited briefing and expedited argument or evidentiary hearing—enjoin the Federal Trade Commission (the "FTC") from taking further action in the FTC administrative proceeding *In the Matter of Asbury Automotive Group, Inc. et. al.*, FTC Docket No. D-9436 (the "FTC Proceeding"), pending resolution of their constitutional claims in this Court.

¹ The term "Asbury Plaintiffs" refers collectively to Plaintiffs Asbury Automotive Group, Inc., Asbury Ft. Worth Ford, LLC, also d/b/a David McDavid Ford Ft. Worth, McDavid Frisco – Hon, LLC, also d/b/a David McDavid Honda of Frisco, McDavid Irving – Hon, LLC, also d/b/a David McDavid Honda of Irving, and Ali Benli.

Dated: October 10 2024

Respectfully submitted,

FOLEY & LARDNER LLP

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By: /s/ Edward D. ("Ed") Burbach

Edward D. ("Ed") Burbach*
(Texas State Bar No. 03355250)
John Sepehri
(Texas State Bar No. 00797408)
Robert F. Johnson III
(Texas State Bar No. 10786400)
Brandon M. Livengood^
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Email: jsepehri@foley.com
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Email: brandon.livengood@foley.com

*Attorney in charge

^ *Pro Hac Vice* application forthcoming

Counsel for the Asbury Plaintiffs

Burbach, Ed

From: Brooks, Jamie <jbrooks4@ftc.gov>
Sent: Friday, October 11, 2024 4:03 PM
To: Chester, Megan; Burbach, Ed; Sepehri, John; Lockerby, Michael J.; Johnson, Rob
Cc: Doty, James; Dwyer, Daniel; Abutaleb, Sarah; Alpert, Joseph
Subject: D-9436 - Complaint Counsel's Preliminary Proposed Fact Witness List
Attachments: 2024.10.11 CC Preliminary Witness List.pdf

**** EXTERNAL EMAIL MESSAGE ****

Hi Ed and Megan,

Please find attached Complaint Counsel's Preliminary Proposed Fact Witness List.

Best,

Jamie

Jamie D. Brooks
Division of Financial Practices
Federal Trade Commission
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Washington, DC 20580
Mobile: (202) 621-3913
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She/her

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

Asbury Automotive Group, Inc.,
a corporation,

Asbury Ft. Worth Ford, LLC, a limited liability Company, also d/b/a David McDavid Ford Ft. Worth,

McDavid Frisco – Hon, LLC, a limited liability Company, also d/b/a David McDavid Honda of Frisco,

McDavid Irving – Hon, LLC, a limited liability Company, also d/b/a David McDavid Honda of Irving, and

Ali Benli, individually and as an officer of
Asbury Ft. Worth Ford, LLC,
McDavid Frisco – Hon, LLC, and
McDavid Irving – Hon, LLC,

Respondents.

Docket No. 9436

COMPLAINT COUNSEL'S PRELIMINARY PROPOSED FACT WITNESS LIST

Pursuant to the Court’s Scheduling Order, dated September 13, 2024, Complaint Counsel hereby provides its Preliminary Proposed Fact Witness List to Respondents Asbury Automotive Group, Inc., Asbury Ft. Worth Ford LLC, also d/b/a David McDavid Ford Ft. Worth, McDavid Frisco – Hon, LLC, also d/b/a David McDavid Honda of Frisco, McDavid Irving – Hon, LLC, also d/b/a David McDavid Honda of Irving, and Ali Benli (“Respondents”). This list identifies the fact witnesses who may testify for Complaint Counsel at the hearing in this action by

deposition and/or investigational hearing transcript, declaration, or orally by live witness.¹ It does not identify expert or rebuttal witnesses, whom Complaint Counsel will identify at a later date in compliance with the Scheduling Order.

The information disclosed herein, including the employment status and job titles for Respondents' employees, is based upon information reasonably available to Complaint Counsel at present. Discovery is ongoing and likely will have an impact on Complaint Counsel's final proposed witness list. Subject to the limitations in the Scheduling Order entered in this action, Complaint Counsel reserves the right:

- A. To present testimony by deposition and/or investigational hearing transcript, declaration, or orally by live witness, from any other person that Respondent identifies as a potential witness in this action;
- B. To present testimony by deposition and/or investigational hearing transcript, declaration, or orally by live witness, from any witnesses to rebut the testimony of witnesses proffered by Respondents;
- C. Not to present testimony by deposition and/or investigational hearing transcript, declaration, or orally by live witness, from any of the witnesses listed below;
- D. To supplement this Preliminary Witness List if additional information becomes available through discovery or otherwise, and pursuant to the Scheduling Order;
- E. To present testimony by deposition transcript, declaration, or orally by live witness, from the custodian of records from which documents or records have been or will be obtained

¹ This list contemplates later refinement, in accordance with the Scheduling Order.

in this action, including, but not limited to, the non-parties listed below, to the extent necessary for the admission of documents or deposition or investigational hearing testimony into evidence in the event that a stipulation cannot be reached concerning the admissibility of such documents or testimony; and

- F. For any individual listed below as being associated with a corporation or other non-party entity, to substitute a witness designated by the associated non-party entity in response to any subpoena that has been or may be issued by Complaint Counsel or Respondents to that non-party entity in this action.

Subject to these reservations of rights, Complaint Counsel's preliminary list of witnesses is as follows:

I. Current and Former Employees of Respondents

1. Ali B. Benli, General Manager, David McDavid Ford Ft. Worth and former General Manager of David McDavid Honda Irving and David McDavid Honda Frisco

We expect Ali Benli will testify about (i) his role and responsibilities, (ii) Respondents' policies and practices related to the sale of add-ons, fair lending, and compliance, (iii) consumer complaints he received or reviewed, (iv) deals and audits he reviewed, and (v) Respondents' response to consumer complaints, audit findings, and incidents of deceptive and unfair practices in connection with the sale of add-ons.

2. Steve Mansell, Former General Manager of David McDavid Ford Ft. Worth

We expect Steve Mansell will testify about (i) his role and responsibilities, (ii) Respondents' policies and practices related to the sale of add-ons, fair lending, and

compliance, (iii) consumer complaints he received or reviewed, (iv) deals and audits he reviewed, and (v) Respondents' response to consumer complaints, audit findings, and incidents of deceptive and unfair practices in connection with the sale of add-ons.

3. Sonia Heredia, Former General Manager of David McDavid Honda of Frisco

We expect Sonia Heredia will testify about (i) Respondents' policies and practices related to the sale of add-ons, fair lending, and compliance (ii) consumer complaints she received or reviewed, (iii) deals and audits she reviewed, and (iv) Respondents' response to consumer complaints, audit findings, and incidents of deceptive and unfair practices in connection with the sale of add-ons.

4. Apollo Chang, General Manager of David McDavid Honda of Irving

We expect Apollo Chang will testify about (i) Respondents' policies and practices related to the sale of add-ons, fair lending, and compliance, (ii) consumer complaints he received or reviewed, (iii) deals and audits he reviewed, and (iv) Respondents' response to consumer complaints, audit findings, and incidents of deceptive and unfair practices in connection with the sale of add-ons.

5. David Hult, President & Chief Executive Officer, Asbury Automotive Group

We expect David Hult will testify about (i) the corporate structure and business functions of Asbury Automotive Group, Inc. and its subsidiaries, including David McDavid Ford Ft. Worth, David McDavid Honda of Frisco, David McDavid Honda of Irving ("McDavid Group Dealerships"), (ii) policies and practices related to add-on sales, fair lending, and compliance, (iii) consumer complaints, audits, investigations, and findings of misconduct related to the sale of

add-ons, and Respondents' responses thereto, and (iv) the role and responsibilities of Ali Benli and other witnesses.

6. Daniel Clara, Senior Vice President, Operations, Asbury Automotive Group, Inc.

We expect Daniel Clara will testify about (i) the corporate structure of Asbury Automotive Group, Inc. and its subsidiaries, including Asbury Automotive Group, LLC, Asbury Management Services, LLC, Asbury Risk Services, LLC, and the McDavid Group Dealerships, (ii) Respondents' policies and practices related to the sale of add-ons and fair lending, and (iii) audits, investigations, consumer complaints, and findings of misconduct related to the McDavid Group Dealerships.

7. Kelly Baker, Vice President, Chief Audit & Risk Executive, Asbury Automotive Group

We expect Kelly Baker will testify about (i) Respondents' policies and practices related to compliance, including the process for conducting audits, (ii) policies and practices related to add-on sales, (iii) policies and practices related to fair lending, (iv) audits, investigations, and findings of misconduct related to the McDavid Group Dealerships and Respondents' responses thereto.

8. Scott Grogan, Director of Compliance and Internal Audit, Asbury Automotive Group

We expect Scott Grogan will testify about (i) Respondents' policies and practices related to compliance, including the process for conducting audits, and (ii) audits and investigations of the McDavid Group Dealerships and Respondents' responses thereto.

9. Barbara Jessup, Chief Audit and Risk Executive

We expect Barbara Jessup will testify about (i) Respondents' policies and practices related to compliance, including the process for conducting audits, and (ii) audits, investigations, and findings of misconduct at the McDavid Group Dealerships and Respondents' responses thereto.

10. Ivan Cerna-Villalobos, Internal Auditor, Asbury Automotive Group

We expect Ivan Cerna-Villalobos will testify about (i) Respondents' policies and practices related to add-on sales, fair lending, and compliance, including the process for conducting audits, and (ii) audits, investigations, and findings of misconduct at of the McDavid Group Dealerships and Respondents' responses thereto.

11. Paris Ramirez, National F&I Director, David McDavid Operations

We expect Paris Ramirez will testify about (i) Respondents' policies and practices related to the sale of add-ons, fair lending, and compliance; (ii) Respondents' lending partners, and (iii) audits, investigations, consumer complaints, and findings of misconduct related to the McDavid Group Dealerships.

12. Tiger Lester, Regional F&I Director, Asbury Automotive Group

We expect Tiger Lester will testify about (i) Respondents' policies and practices related to the sale of add-ons, fair lending, and compliance, and (ii) audits, investigations, consumer complaints, and findings of misconduct related to the McDavid Group Dealerships.

13. Chadrick S. McClellon, F&I Director, David McDavid Ford Ft. Worth

We expect that Chadrick McClellon will testify concerning (i) Respondents' policies and

practices related to the sale of add-ons, (ii) his own experience managing the sale of add-ons, (iii) the documents and platforms used by F&I managers, (iv) consumer complaints, and (v) Respondents' response to consumer complaints, audit findings, and incidents of deceptive and unfair practices in connection with the sale of add-ons.

**14. One or more current or former F&I Managers of David McDavid Ford Ft. Worth;
individual(s) to be identified**

We expect that a current or former F&I manager of David McDavid Ford Ft. Worth will testify concerning (i) Respondents' policies and practices related to the sale of add-ons, (ii) his or her own experience selling add-ons, (iii) the documents and platforms used by F&I managers, (iv) consumer complaints, and (v) Respondents' response to consumer complaints, audit findings, and incidents of deceptive and unfair practices in connection with the sale of add-ons.

**15. One or more current or former F&I Managers or Directors of David McDavid
Honda of Frisco; individual(s) to be identified**

We expect that a current or former F&I Manager or Director of David McDavid Honda of Frisco will testify concerning (i) Respondents' policies and practices related to the sale of add-ons, (ii) his or her own experience selling or overseeing the sale of add-ons, (iii) the documents and platforms used by F&I managers, (iv) consumer complaints, and (v) Respondents' response to consumer complaints, audit findings, and incidents of deceptive and unfair practices in connection with the sale of add-ons.

16. One or more current or former F&I Managers or Directors of David McDavid

Honda of Irving; individual(s) to be identified

We expect that a current or former F&I Manager or Director of David McDavid Honda of Irving will testify concerning (i) Respondents' policies and practices related to the sale of add-ons, (ii) his or her own experience selling or overseeing the sale of add-ons, (iii) the documents and platforms used by F&I managers, (iv) consumer complaints, and (v) Respondents' response to consumer complaints, audit findings, and incidents of deceptive and unfair practices in connection with the sale of add-ons.

17. Gerald N. Rollinson, Sales Manager, David McDavid Ford Ft. Worth

We expect that Gerald Rollinson will testify concerning (i) his experience managing sales advisors, (ii) Respondents' policies and practices related to the sale, leasing, and financing of motor vehicles and add-ons, including policies and practices related to quoting prices and payments, (iii) the documents and platforms used by sales advisors, (iv) consumer complaints, and (v) Respondents' response to consumer complaints, audit findings, and incidents of deceptive and unfair practices in connection with the sale of add-ons.

18. Brian M. Bertschy, Sales Manager, David McDavid Ford Ft. Worth

We expect that Brian Bertschy will testify concerning (i) his experience managing sales advisors, (ii) Respondents' policies and practices related to the sale, leasing, and financing of motor vehicles and add-ons, including policies and practices related to quoting prices and payments, (iii) the documents and platforms used by sales advisors, (iv) consumer complaints, and (v) Respondents' response to consumer complaints, audit findings, and incidents of

deceptive and unfair practices in connection with the sale of add-ons.

19. One or more current or former Sales Managers or Advisors of David McDavid

Honda of Irving; individual(s) to be identified

We expect that a current or former Sales Manager or Advisor of David McDavid Honda of Irving will testify concerning (i) his or her experience selling or managing the sale of motor vehicles and add-ons, (ii) Respondents' policies and practices related to the sale, leasing, and financing of motor vehicles and add-ons, including policies and practices related to quoting prices and payments, (iii) the documents and platforms used by sales advisors, (iv) consumer complaints, and (v) Respondents' response to consumer complaints, audit findings, and incidents of deceptive and unfair practices in connection with the sale of add-ons.

**20. One or more current or former Sales Managers of David McDavid Honda of Frisco;
individual(s) to be identified**

We expect that a current or former Sales Manager or Advisor of David McDavid Honda of Frisco will testify concerning (i) his or her experience selling or managing the sale of motor vehicles and add-ons, (ii) Respondents' policies and practices related to the sale, leasing, and financing of motor vehicles and add-ons, including policies and practices related to quoting prices and payments, (iii) the documents and platforms used by sales advisors, (iv) consumer complaints, and (v) Respondents' response to consumer complaints, audit findings, and incidents of deceptive and unfair practices in connection with the sale of add-ons.

II. Related Entities

21. Asbury Automotive Group, LLC Representative; individual to be identified.

We anticipate that a representative from Asbury Automotive Group, LLC may testify regarding (i) the corporate structure and business functions of Asbury Automotive Group, Inc. and its subsidiaries, and (ii) the authenticity of any documents produced by Respondents and the manner in which any such document was stored and maintained in Respondents' files.

22. Asbury Management Services, LLC Representative; individual to be identified.

We anticipate that a representative from Asbury Management Services, LLC may testify regarding (i) the corporate structure and business functions of Asbury Automotive Group, Inc. and its subsidiaries, (ii) the hiring, termination, payment, and employment status of employees at the McDavid Group Dealerships, and (iii) the authenticity of any documents produced by Respondents and the manner in which any such document was stored and maintained in Respondents' files.

III. Business Partners and Third Parties

23. Cal-Tex Protective Coatings, Inc. Representative; individual to be identified.

We anticipate that a representative from Cal-Tex Protective Coatings, Inc. may testify about the sale of add-on products, including ResistAll, at the McDavid Group Dealerships.

24. American Honda Finance Corporation Representative; individual to be identified.

We anticipate that a representative from American Honda Finance Corporation may testify about the sale of add-on products at the McDavid Group Dealerships.

25. Jim Moran & Associates, Inc. Representative; individual to be identified.

We anticipate that a representative from Jim Moran & Associates, Inc. may testify about the sale of add-on products at the McDavid Group Dealerships.

IV. Consumers

26. Consumers who purchased vehicles at David McDavid Ford Ft. Worth; individuals to be identified.

We expect one or more consumers will testify about their experience purchasing a motor vehicle and being charged for add-ons at David McDavid Ford Ft. Worth. Complaint Counsel note that fact discovery is ongoing and counsel is still identifying additional harmed consumers as well as awaiting Respondents' production of documents concerning the consumers Complaint Counsel have already identified to Respondents. This discovery will inform Complaint Counsel's decision of which consumers to call as witnesses.

27. Consumers who purchased vehicles at David McDavid Honda of Frisco; individuals to be identified.

We expect one or more consumers will testify about their experience purchasing a motor vehicle and being charged for add-ons at David McDavid Honda of Frisco.

28. Consumers who purchased vehicles at David McDavid Honda of Irving; individuals to be identified.

We expect one or more consumers will testify about their experience purchasing a motor vehicle and being charged for add-ons at David McDavid Honda of Irving.

Dated: October 11, 2024

/s/ Jamie D. Brooks

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Counsel Supporting the Complaint

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record by email on October 11, 2024.

/s/ Jamie D. Brooks

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